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## FORM OF CONSTITUTIONAL RIGHTS OF WIFE AND CHILDREN AS VICTIMS OF SIRRI POLYGAMY

Muhammad Habiburrahman\*, ORCID: 0009-0005-9697-898X,  
Moh Fadli, ORCID: 0000-0003-3314-162X,  
Siti Hamidah, ORCID: 0000-0003-4612-7739,  
Djumikasih, ORCID: 0009-0002-1846-3305

Faculty of Law, Brawijaya University, Malang, East Java, Indonesia

\*Corresponding author: Muhammad Habiburrahman, [habib.fh23@gmail.com](mailto:habib.fh23@gmail.com)

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**Abstract.** The phenomenon of *sirri* polygamous marriages, or without the permission of a legal wife and without the permission of the Religious Courts, common in Banjar Regency, South Kalimantan Province, still raises arguments for and against. Originally the meaning of *sirri* marriage was intended for the case where the conditions of marriage were not met, but now it has been extended to marriages that meet the conditions but have not been registered with the religious affairs office (KUA) of the sub-sector for those who are Muslim. The purpose of the study was to elucidate the constitutional rights of wives and children who were neglected as victims of polygamous marriages in Banjar Regency. This research is a type of empirical legal research with statutory, case and conceptual approaches. The results of the analysis show that *sirri* polygamy has an impact in the form of constitutional losses for spouses and children. If a polygamous marriage has received permission from the first wife, then the *sirri* wife can be well received and does not receive social sanctions in society, as well as the children of *sirri* polygamy are well received and equal in society. Sociologically, a child of a qualifying *sirri* polygamous marriage is legitimate, so the legal relationship between the child and both parents is one of kinship and inheritance. The constitutional issue for children of *sirri* polygamous marriages takes the form of legal issues related to identity rights. This is inseparable from the usual factors in an area, where for the Banjar community children born in wedlock, whether *Sirri* or registered, are considered legitimate children.

**Keywords:** *Constitutional rights, wife, children, polygamy.*

Fenomenul căsătoriilor poligame *sirri*, sau fără permisiunea unei soții legale și fără permisiunea Curților religioase, frecvent în Banjar Regency, provincia Kalimantan de Sud, ridică în continuare argumente *pro* și *contra*. Inițial sensul de căsătorie *sirri* a fost destinat pentru cazul în care nu se îndeplineau condițiile căsătoriei, dar ulterior a fost extins și asupra căsătoriilor care îndeplinesc condițiile, dar nu au fost înregistrate la biroul de afaceri religioase (KUA) din sub-district pentru cei care sunt musulmani. Scopul studiului a fost de a elucidă drepturile constituționale ale soțiilor și copiilor care au fost neglijați ca victime ale

căsătoriilor poligame în Banjar Regency. Această cercetare este un tip de cercetare juridică empirică cu abordări statutare, de caz și conceptuale. Rezultatele analizei arată, că poligamia *sirri* are un impact sub formă de pierderi constituționale pentru soții și copii. Dacă o căsătorie poligamă a primit permisiunea de la prima soție, atunci soția *sirri* poate fi bine primită și nu primește sancțiuni sociale în societate, precum și copiii din poligamia *sirri* sunt bine primiți și egali în societate. Sociologic, un copil dintr-o căsătorie poligamă *sirri* care îndeplinește condițiile este legitim, astfel încât raportul juridic dintre copil și ambii părinți este de rudenie și se poate moșteni. Problema constituțională pentru copiii căsătoriilor poligame *sirri* ia forma unor probleme juridice legate de drepturile de identitate. Acest lucru este inseparabil de factorii cutumiari dintr-o zonă, în care pentru comunitatea Banjar copiii născuți în căsătorie, fie că sunt *sirri* sau înregistrați, sunt considerați copii legitimi.

**Cuvinte cheie:** *Drepturi constituționale, soție, copii, poligamie.*

### 1. Introduction

Humans are social creatures who always want to gather and interact with other humans [1], naturally humans are also created in pairs, and have a tendency to form groups or families and to form offspring from generation to generation through marriage [2]. In other words, marriage is a process of forming a family between a man and a woman based on love and affection. Meanwhile, according to fiqh [3], Marriage is the binding of a man and a woman who are not their mahram in a contract so that both of them become lawful and social matters and limit rights and obligations and oblige each other to help each other. Based on the Marriage Law, marriage is an inner bond between a man and a woman as a legal husband and wife who have the goal of forming a happy family in accordance with the beliefs held [4].

Marriage law in Indonesia states that a marriage that is recognized by the state is a marriage that is legal in both religion (material) and juridical (formal). Marriage is valid based on religion if it is carried out according to the conditions and pillars of marriage in each religion. Juridically valid marriages are marriages that are registered with the ministry of religion with the conditions stipulated in Law Number 1 of 1974 concerning Marriage Article 2 paragraphs 1 and 2 [5]. Registration of marriages is also regulated in the Compilation of Islamic Law (KHI) Article 5 paragraph (1). Most of Indonesia's population is Muslim, and in fact in society many marriages only refer to Islamic religious law. The phenomenon can be said to be based only on Article 2 paragraph (1) of the Marriage Law, which is legal according to religious law which means it is also legal according to state law, but has not been recorded in the ministry of religion based on Article 2 paragraph (2) concerning orders to register marriages. This marriage is known as underhand marriage.

This underhand marriage is very detrimental to women, this is because there is no authentic evidence in the form of a marriage certificate registered at the Office of Religious Affairs (KUA). This underhand marriage also runs the risk that the marriage is deemed to have never existed or that there is no proof of the existence of a marriage bond. Underhanded marriages are common in all regions of Indonesia, one of which is in Banjar Regency, South Kalimantan Province which raises many pros and cons. In this area there are many underhand marriages or unregistered marriages, these unregistered marriages are mostly carried out by people who are married without the knowledge of their first wife. Initially, *sirri* marriage was defined as a marriage that did not fulfill the pillars and conditions of marriage, but now the definition has been expanded, namely marriage that fulfills the pillars and conditions of

marriage, but has not or has not been registered at the sub-district religious affairs office (KUA) for those who are Muslim [6].

The Marriage Law in Indonesia basically adheres to the principle of monogamy, but the right is private if desired by the person concerned if he wishes to carry out a polygamous marriage, because the law and religion of the person concerned allow a man to have more than one wife. However, marriage is only carried out if it fulfills various predetermined requirements and is based on permission from the Religious Court. In the people of Banjar Regency, very few men (husbands) practice polygamous marriages legally by asking permission from the previous wife and/or asking the wife's permission and applying for permission for polygamy to the Religious Courts, this is based on the facts that happened in in the Banjar Regency community that those who practice polygamous sirri marriages are very high in perpetrators, this is based on statistical data on cases at the Martapura Religious Court, Banjar Regency, South Kalimantan Province, namely the dominating cases are divorce cases filed by the wife whose main problem is "the result of there has been a polygamous marriage without the knowledge of the first wife and without official permission from the local Religious Court which has been going on for years", and another reason is the large number of applications for *itsbat nikah* (validation of the marriage) which have been cumulative with divorce claims against their husbands due to being neglected by then examined and decided and divorced through the decision of the Religious Court as well as cases of validation or recognition of children unilaterally, namely from the mother's side.

This problem occurs due to rights and obligations that are not appropriate but end up without justice, legal certainty and legal benefits (such as: neglect of wife and children from previous marriages and neglect of polygamous sirri marriage wife and children of the marriage), as well as there is no clarity regarding the certainty regarding the right to support his wife and children, there is no clarity regarding the right to share in the joint assets resulting from the marriage, and there is no clarity regarding the right to share in the inheritance of his wife and children if death occurs since the sirri polygamous marriage was carried out. Based on the background of the problems above, the problem that can be stated is how is the form of the constitutional rights of wives and children who are neglected as victims of sirri polygamy in Banjar Regency?

## **2. Research Method**

This research is a type of empirical legal research [7]. The legal sociology and legal psychology approaches are the approaches used in empirical legal research. Both of these approaches are used to analyze laws about how reactions and interactions occur when the system of norms works in society [8]. Empirical law is also carried out by taking into account the elements of the values of legal effectiveness, legal compliance, the role of legal institutions or institutions in law enforcement, the implementation of the rule of law, and the influence of social problems on the rule of law that occur in the community of Banjar Regency in terms of the implementation of polygamous sirri marriages and a paradigm shift in society to legitimize their sirri polygamous marriages [9].

This research approach consists of a statutory approach, a case approach, and a concept approach. The statutory approach is to examine all regulations or laws and regulations that are related to the issue of marriage, especially the Marriage Law, Surat Edaran Mahkamah Agung (SEMA) No.3/2018 [10], with the Judicial Powers Law No.48/2009 [11], KHI, and KMA Regulation Number KMA/ 032/SK/IV/2006 [12] and SEMA 2/2019 [13].

The case approach is by examining disputes or similar cases related to cases of legalizing marriages on the grounds of sirri polygamy that have occurred in Indonesia. The conceptual approach is an approach that is carried out by examining more deeply the views and legal doctrines so that ideas are found that can create legal notions, legal concepts, and legal principles that are relevant to the research topic.

This research data is a type of primary data and secondary data. Primary data in the form of data obtained directly from the research location (field research). Secondary data in the form of data obtained from laws and regulations issued by the relevant central government as well as social institutions both written and unwritten that exist in the Banjar Regency legal community, tracking and documentation of various institutions or agencies in the form of those related to sirri polygamous marriages . Data collection in this study was carried out by combining 2 (two) techniques at once, namely: first, to obtain primary data, field research was carried out by conducting involved observations and in-depth interviews using grouped interview guidelines. by involving judges at the Martapura Religious Court Class IB, religious leaders in Banjar Regency, community leaders, government officials in each research village and the legal division of the regional government of Banjar Regency, South Kalimantan. Second, to obtain secondary data, the technique of tracing legal materials and legal documentation from various sources of literature was used.

The primary data analysis and interpretation phase uses descriptive qualitative analysis techniques. After being analyzed and the data has been tested for validity, the next step is to inductively interpret the data obtained and compare it with existing theory. Interpretation of data is a fundamental step in research. Therefore, the interpretation of this data continues throughout the research, so that if there is data that is invalid and not in accordance with the research framework, further data exploration can be carried out immediately. Analysis in the interpretation of this data is carried out using the double hermeneutic analysis model, namely the interpretation of legal texts or the method of understanding a normative text [14], by giving an interpretation of the text of the law while sticking to it. with text sound. After the process of interpreting the data has been carried out and finding the right conclusion formula, the next step is to present the conclusions of the research results in a research report which will be arranged systematically according to the existing theoretical framework.

### **3. Results and Discussion**

Marriage is a legal process, so things or actions that arise as a result of marriage are legal actions that must receive legal protection. If a marriage is not registered legally, matters relating to the consequences of marriage cannot be resolved legally. Since polygamy was established in Islam, since then various opinions have appeared with various interpretations that still occur today. There are those who are pro and some who are against polygamy, so differences of opinion cannot be avoided. But whatever it is, polygamy is a reality in people's lives from the past until now. Basically this fact does not only occur in the people of Banjar Regency, South Kalimantan, but also occurs in other Islamic societies. Sirii marriage is allowed in the Banjar district community [15]. The Banjar community can marry up to four times as long as the unregistered marriage is in accordance with Islamic teachings, namely that the husband must be able to be fair to his wives. A man may remarry if he is able to give his wealth to his previous wife, therefore in Banjar society, men who are allowed to perform

sirri marriages are considered "baduit" (wealthy). However, in fact, it is possible that polygamy is also carried out by those who are economically insecure.

The perpetrators of polygamy in the Banjar Regency area are not only carried out by men from the "baduit" circle, but also by religious scholars who are referred to as: Tuan Guru. The people believe that a Tuan Guru has not been tested for his mastery if he only has one wife. One example of a religious scholar in Banjar district who practices polygamy is Syekh Arsyad al-Banjari, in fact this scholar already had 11 wives whom he married at different times. There are fundamental differences regarding polygamous actors in Banjar Regency. The polygamy practiced among the "baduit" is based on the physical beauty of a woman so that the "baduit" man seeks directly the woman he wants to make his honey. Whereas polygamy practiced by religious scholars or Tuan Guru tends to be at the request of the woman who wants to marry. In fact, in the Banjar community, the first wife sometimes does not know if her husband has remarried, and the marriage is carried out unofficially (Sirri). This was stated by respondent 1 who was interviewed by the researcher. He said that only a few men wanted to get married by asking permission from their wives, this can also be seen from the records at the Martapura Religious Court which throughout 2022 recorded only 2 cases of polygamy permits being prosecuted at the Banjar district court, namely the Martapura Religious Court.

Respondent 2 stated that he had submitted a marriage certificate to the Martapura Religious Court to request legalization of his second wife's marriage, which was previously done in sirri, but was rejected by PTSP because a polygamy permit was required beforehand, whereas currently he is married in sirri with his second wife and have 2 children. The first wife is also no longer a problem. In this condition, when he applies for a polygamy permit, after it is granted he must remarry, while his two children must submit the origin of the children to obtain their constitutional rights. So that respondent 2 felt that it was very burdensome, this was also felt by respondent 3, a gold trader at Batuah Market, Martapura. If remarried, the recognized marriage date is the newly registered marriage, while for 10 years he married Sirri as the second wife, he also contributed to the joint property and it was considered to have never existed [16].

In another case of polygamy practiced by a tuan guru in Banjar, demands for polygamy came from other people. Like the polygamy case of Respondent 4 where his second wife married because of the insistence of the wife's parents who "handed over" their child to the tuan guru. Although the second wife initially refused the "arrangement" of her parents, in the end she also accepted it. As for the first wife, he could understand the reason and accepted it well. Until now, Tuan Guru's two wives live in harmony and close together in one complex (Interview with FS on Friday, 17 March 2023). Phenomena like this are basically very common in the people of Banjar district, where the woman, whether it comes at the request of her own child or at the discretion of her parents, begs for the tuan guru's wife and knowingly knows that the tuan guru is already married. The first wife usually knows and gives her husband permission to practice polygamy. In fact, not infrequently, the first wife helps "select" a polygamous partner for her husband. Even so, polygamous marriages are rarely carried out officially because these tuan guru think that marriages that are in accordance with the terms and conditions of harmony are sufficiently valid.

In a Tuan Guru polygamous marriage, the figure of the former wife always reflects an attitude of sincere acceptance of her husband's polygamous behavior and of the presence of other women who of course will also take her husband's attention and affection. Of the

several cases of polygamy committed by tuan guru in the Banjar community, the specific reasons underlying the actions of these polygamous tuan guru are different from each other. There are those who practice polygamy for reasons of procreation. This is a very humane reason considering that a tuan guru certainly wants his offspring to continue the da'wah that he has been doing. In cases like this, the previous wife often helps choose her honeymoon partner (Interview with YQ, 10 June 2022).

In fact, such reasons are often explained to the public when explaining the matter of polygamy, the more wives, the more wives, the more offspring, the more successors of da'wah in the future..

In the case of the other Tuan Guru polygamy (Respondent 5), it is closely related to the request of the woman's parents to marry the Master's wife. Many backgrounds Respondent FS is the brother of a woman's father who is now the second wife of a tuan guru in Banjar district. Respondent YQ is a woman who lives close to the residence of a tuan guru in Banjar, often attends recitations held by him, and interacts with his first wife in a neighboring environment that underlies parents in Banjar asking the tuan guru to marry their child.

In the minds of parents, even though he is married, the tuan guru as someone who understands religion must be able to act fairly among his wives and be a good priest for his daughter and be able to guide her towards the path of goodness.

Thus parents will not feel worried when "handing it over". The same thing was expressed by FS in his interview, that his nephew was "handed over" by his parents to a tuan guru with consideration for the good of his own niece. In such cases, usually the child rarely refuses requests from his own parents because parents often base them on shielding as a form of devotion to their parents. With the reason of filial piety to parents, hardly any children dare to go against it.

The community believes that with his capacity as a tuan guru, a person will be able to fulfill the requirements stipulated in Islam regarding polygamous marriages, namely being able to act fairly and provide for his wives well. As a public figure, of course all the actions, speech and behavior of a tuan guru become a living example in society, including his polygamous acts.

Therefore, this is thought to be a strong factor for polygamous behavior to grow at dawn among the people of Banjar district.

The community will follow the example of the tuan guru's actions, especially since the religious arguments themselves allow this polygamy.

Based on the research results of 5 cases of sirri polygamy obtained in the field with the following description:

Table 1

<b>Description of sirri polygamy in banjar regency</b>					
	Respondent 1	Respondent 2	Respondent 3	Respondent 4	Respondent 5
Status	Isteri kedua	Isteri kedua	Isteri kedua	Isteri kedua	Isteri kedua
Long Merried	5 years	3 years	10 years	7 years	8 years
Child	2 child	1 child	2 child	4 child	3 child
Among Husband	Public	traders	Public official	Tuan Guru	Tuan Guru

Table 2

<b>First wife's response to sirri polygamy in banjar regency</b>					
	Respondent 6	Respondent 7	Respondent 8	Respondent 9	Respondent 10
Status	First Wife	First Wife	First Wife	First Wife	First Wife
Long Merried	15 years	10 years	20 years	20 years	20 years
Child	0 child	1 child	2 child	2 child	2 child
Response to polygamy	Reject	Reject	Accept	Accept	Accept

The responses of the first wives to research questions related to whether they are willing to be parties to polygamy isbat are broadly divided into two, namely first, the first wife who is willing to become a party to a polygamous marriage certificate by asking for her rights as a polygamous wife and the legal consequences, as stated in the polygamy permit requirements, basically they are willing to be polygamous, which on average are the wives of the tuan guru. Second, the first wife refuses to be a party to the polygamous marriage certificate case because basically she does not agree to polygamy. In this case, they hope that the joint property acquired by the husband and the second wife will not be shared at all. Most of the first wives who respond in this way are the first wives of the "baduit" and "trader" families. Furthermore, according to Informant 1, a tuan guru in Banjar district stated that those who practice sirri polygamy mostly have received permission from the first wife, it's just that the scholars of the Banjar community consider that sirri marriage as long as it fulfills the conditions and gets along well does not cause problems, the proof is that the household remains harmonious.

Still according to informant 1, since the 20th century there has been a change in the mindset of second wives to get recognition from the state, this is because it turns out that sirri polygamy has a crucial impact and causes losses. One example, after the death of her husband, the second wife who has not yet been certified does not get any rights, as well as the status of children from the second wife is not recognized by the state. According to informant 2, a judge at the Martapura Religious Court stated that after the emergence of SEMA 3/2018 regarding the strictness of not accepting polygamous marriage certificates, it increasingly had an impact on people's reluctance to legalize their polygamous marriage status, even though the reasons for polygamy and the consent of the first wife had been fulfilled. To be directed to the polygamy permit procedure, most people refuse because it means having to do a re-marriage and what is obtained during a sirri marriage is never taken into account. Likewise, the status of children must go through the origin of the child and this is considered very troublesome even though their marriage is valid according to Islamic law.

In line with the above, in the view of informant 3, a public official who is also a polygamist, that closing the door for marriage constituencies for sirri polygamists is very detrimental to the constitutional rights of the second wife and children from a polygamous marriage. Because it needs to be examined first why the procedure for permitting polygamy is not generally followed, not solely because there is no permission from the first wife but because at that time marriage registration was not considered necessary but now there has been a change in the legal paradigm in Banjar Regency society regarding the urgency of recording siri polygamous marriage. Apart from the pros and cons of polygamy, the fact that

this practice has become one of the Islamic laws that applies until the end of time makes the phenomenon of polygamous marriages common in the life of Muslim society. Even though in reality, implementation in society tends to be motivated by one-sided goals, sometimes because of biological demands, or theological justification. Actually, siri marriage has legal consequences for husbands, wives and children born from siri marriages, it's just that if you look at the many cases, the legal consequences that are detrimental, are more experienced by women (wives) and children born from the unregistered marriages series, than the cases experienced by husbands. Based on the results of the research above, it can be concluded that the wife and children of sirri polygamy have the same constitutional rights as a registered marriage as long as normative procedures are followed. The forms of the constitution include the following:

### **1. Forms of Neglected Constitutional Rights for Wives from Sirri Polygamous Marriages in Banjar Regency**

#### 1) Not recognized as a wife

Wives from sirri marriages will not be recognized as legal wives according to Indonesian law, because there is no evidence in the form of a marriage certificate or marriage book and they are not registered at the local Religious Affairs Office. If the husband is not responsible for the sirri marriage that he does, then the woman cannot legally sue the husband, and the husband may assume that the woman is not his wife.

#### 2) Neglect of rights and obligations

Because unregistered marriages cannot be legally prosecuted, if the man is not responsible then there is a possibility that the woman will not get her rights as a wife and cannot demand that the man fulfill his obligations as a husband.

#### 3) Not entitled to maintenance, inheritance, and distribution of joint assets

#### 4) Does not provide legal certainty.

#### 5) Makes it difficult to identify someone's status

In unregistered marriages, many people do not know their identity regarding the status of their partner or one of them. In Islam there is an order to announce marriage. This is so that if someone puts their heart into it, he will back off because the person he has an eye on is already married, so that the status of that person is clear, namely already married or already married. This ambiguity of status will also have consequences for unregistered marriage partners because of their unclear identity as partners in a legal marriage to obtain certain facilities such as being together in one room in an inn [17].

#### 6) Unregistered marriages cause slander

The risk of siri marriages is the emergence of slander, the public thinks that marriages carried out in siri are an attempt by themselves (married couples) to cover up the disgrace surrounding pregnancies outside of marriage, even though this speculation is not necessarily true or there are other things that are hidden and make society prejudiced (su'udzon).

#### 7) It makes it difficult for the public to testify

If in the future there is a problem, involving an unregistered marriage partner, it will be difficult for the public to provide their testimony. Due to unregistered marriages, the public does not know that the couple is married, as a result, if there is a dispute between the unregistered marriage partners or there is neglect of their wife and/or children



economically, for example, it will be difficult for the community to provide assistance or provide testimony.

8) Difficult to socialize

Wives who enter into unregistered marriages will find it difficult to socialize because they are often considered to have lived in the same house with men without marital ties (aka cohabitation) or are considered as mistresses.

9) There is an assumption of polygamy against the perpetrators of unregistered marriages

If there are couples who carry out unregistered marriages, the community will suspect them. The community considers that unregistered marriage is an attempt to cover up the existence of polygamy (because the man is already married and does not have permission/does not receive permission to remarry) so the marriage is carried out secretly, so that the previous wife or first wife does not know about the polygamy although this assumption is not true.

10) There is a dispute with related parties

If the unregistered marriage is carried out because of polygamy, then quarrels/disputes will occur in families who practice polygamy. The dispute occurred because she knew that her husband had secretly remarried another woman or because of injustice between the first or second wife. This dispute will have an impact on wives and children who are born from unregistered marriages, because wives who are in unregistered marriages do not have authentic proof of their marriage, so they are legally unable to do anything.

11) Social sanctions from society against the perpetrators of unregistered marriages.

Having a marriage certificate can protect husband and wife from slander, accusations of adultery and other bad prejudice. So it is clear that registering a marriage to obtain a marriage certificate is very important for preventive action and also for benefit (good interest). In this case the wife who is polygamous sirri is harmed by the social sanction, even though the first wife has given her permission for polygamy. However, because the polygamy permit was not officially filed in court so that the polygamy that was carried out remained unrecorded, scorn was often directed at the second wife.

## **2. Forms of Neglected Constitutional Rights for Children resulting from Sirri Polygamy Marriages in Banjar Regency**

The following is a constitutional loss for children from unregistered marriages, as a result of Article 43 paragraph (1) UUP (before the Constitutional Court decision No. 46/PUU-VIII/2010), including:

1) The child only has civil relations with the mother and the mother's family

Children resulting from unregistered polygamous marriages are considered illegitimate children and the fact that the child must be accepted only has a civil relationship with the mother and the mother's family. This means that between father and child there is no legal relationship (Article 42 and Article 43 UUP and Article 100 KHI), this is different/changed by the decision of the Constitutional Court Number 46/PUU-VIII/2010). In the birth certificate, their status is considered as a child out of wedlock, so only the name of the mother who gave birth to them is included. In making a birth certificate, for example, the child will only be recorded as the child of his mother because civil registration for the birth of a child requires an official marriage certificate from the state, so that his identity rights will not be recognized that he is the child of a father who has had a siri marriage, so his nasab (bin or his daughter) joined his mother.

- 2) Children are not entitled to maintenance, inheritance and other rights  
As long as there is no denial from both parties of the unregistered marriage or the perpetrator is responsible, there is no problem in terms of providing physical and spiritual support. However, if there is denial or the father who enters into a siri marriage is not responsible for leaving the child of the siri marriage just like that, then this will be detrimental to the child, because the child of the siri marriage does not get the material and moral rights that a child should receive from his father, such as maintenance rights, maintenance rights, marriage guardianship rights for daughters, and mutual inheritance rights in the event of death.
- 3) Unregistered marriages are detrimental to children in the future, because to enter school a birth certificate is required, while a birth certificate can be made if there is a marriage certificate. Husbands and wives who carry out unregistered marriages do not have a marriage certificate or marriage certificate, so as a result they cannot have a family card.
- 4) Children from unregistered marriages are vulnerable to becoming victims of exploitation. If the husband is not responsible for the sirri marriage that he has carried out, then the child born from the sirri marriage is vulnerable to becoming a victim of child exploitation. Many children of victims of unregistered marriages are neglected economically, so they are used by irresponsible people, for example being made into beggars, made into prostitutes, and can become victims of child trafficking.
- 5) The status of children from unregistered marriages, the child will often be discussed, because the status of the parents is not clear. The existence of the term illegitimate child or child out of wedlock towards the child is an example that often occurs in society, this will continue with the child's difficulties in getting along with his environment.
- 6) Children from siri marriages will experience a psychological burden, with negative responses from the community, will make the child depressed and lose self-confidence so that it can interfere with the child's mental development [18].

Various consequences of unregistered marriages as above have changed after the decision of the Constitutional Court No. 46/PUU-VIII/2010 against Article 43 paragraph (1) UUP. This Constitutional Court decision has an effect on changing the law for wives and children born in the unregistered marriage.

1. It is discussed in detail in the following presentation, against the Children of the Constitutional Court Decision, *mutatis mutandis* has resulted in many legal changes, among others, namely:
  - a. Changing the child's blood relationship with his biological father, which was originally only natural (*sunnatullah*) into a legal relationship that has legal consequences in the form of a civil relationship.
  - b. In addition to having a civil relationship with the mother and the mother's family, a child from a Sirri marriage also has a civil relationship with his biological father and his father's family.
  - c. There is legal responsibility for the father towards the child born as a result of his actions, even though the child was born out of wedlock. Previously, biological fathers could not be sued to be responsible for their biological children[19].
2. Against women/wives  
Constitutional Court Decision No. 46/PUUVIII/2010 does not discuss women (wives) in unregistered marriages, but based on an analysis from the author with the Constitutional Court's decision, originally children born outside of marriage only had civil relations with

their mothers and their mothers' families, after that decision the children born outside of marriage are not only civilly related only to the mother, but also to the man who is proven to be his biological father[20].

Of course, this decision makes the wife or mother of a child born in an unregistered marriage happy, because in this way the child has legal certainty regarding his civil rights towards his biological father, which of course can give better hope for the child's life in the future. come. With this decision too, of course it will result in men being more careful in carrying out an act that causes the birth of children outside of marriage and this means that it can also affect women/wives from the arbitrary actions of men. 3) Constitutional Court Decision No. 46/PUU/VII/2012 Article 43 Paragraph (1) UUP Constitutional Court Decision Number 46/PUUVIII/2010 has considerable influence in the application of several legal rules in the Republic of Indonesia, especially some material rules which have been used as a reference in adjudicating a case in the Religious Courts [21].

From the MK decision in full, several points can be drawn regarding the purpose of amending Article 43 paragraph (1) of the Marriage Law, namely:

1. Provide legal legality of civil relations between children and their biological fathers.
2. The basic rights of children are protected by law, both towards their father and their father's family and their environment.
3. Children from siri marriages get fair treatment.
4. According to law, the father has the obligation to look after his biological child.
5. Children have inheritance rights from their father because of blood relations.
6. Children from siri marriages get a bright future.
7. Children from siri marriages receive care, maintenance, education and living expenses, protection and so on from their fathers as they should.
8. Give legal firmness that every man must be responsible for his actions and the consequences that arise because of his actions, in this case causing the birth of children (MK Decision, 2012: 29-36). They cannot escape this responsibility.

Every child in Indonesia is protected by the Child Protection Law, with regards to their right to know their parents, identity and birth certificate ownership. It's just that at that time it had not been implemented for children out of wedlock because it contradicted Article 43 of the Marriage Law. In fact, if analyzed more thoroughly, the Child Protection Law is newer because it was only enacted in 2002, while the Marriage Law was older, namely 1974, so if there are old rules that conflict with the new rules, the new ones do not repeal the old rules explicitly, then what is enforced is the new rule, based on the principle of *Lex Posteriori Derogat Legi Priori*. So, it can be concluded that the Constitutional Court Decision No. 46/PUU-VIII/2010, actually emphasized the enactment of the Child Protection Law against children out of wedlock, who also have the same rights as other children, especially with regard to the right to identity, name and right to knowing his parents which can only be proven by a birth certificate [22].

In fact, in the community of Banjar district, viewed sociologically, the existence of sirri polygamous marriage children is treated as a registered child as long as sirri polygamy is carried out on the acceptance of the first wife. Throughout the research the author, based on the results of interviews with community leaders in Banjar district, believes that children from polygamous sirri marriages that fulfill the pillars and conditions of marriage are legitimate children so that the legal relationship between the child and both parents is kinship and can inherit from each other which is different from status of child from cohabitation/adultery.

Thus the constitutional problem regarding the rights of children resulting from polygamous marriages is a juridical problem related to identity rights that is more prominent than its sociological problems. This is inseparable from customary or customary factors in an area, where for the Banjar community children born in sirri or registered marriages are considered legitimate children, regardless of how long after the marriage the child is born, as long as the marriage is legal which is usually in a marriage was married off by a respected tuan guru.

#### 4. Conclusions

Sirri polygamy has an impact in the form of constitutional losses to wives and children, among other forms of neglected constitutional rights. For wives who are polygamous in Siri, they include the right to be recognized as a wife, the right to be given rights as a wife from her husband, the right to maintenance, inheritance, and distribution of joint assets, the right to obtain legal certainty, the right to certainty of status identity, the right to security against bad speculation from society and social sanctions, the right to obtain testimony from the public, the right to social security. In the Banjar district community, if a polygamous marriage has received permission from the first wife, the siri wife is well received in the Banjar community and is understood by the community. This case occurred with several community leaders in Banjar Regency, where wives who are polygamous sirri do not get social sanctions in society, as well as children from sssirri polygamy are well received and equal in society.

For children from unregistered polygamous marriages, in general, unregistered polygamous marriages can threaten the basic rights of children resulting from unregistered polygamous marriages as Articles 4 to 18 of Law no. 23 of 2002 concerning Child Protection. These rights include the right to be able to live, grow, develop, and participate fairly in accordance with human dignity and dignity, the right to receive protection from violence and discrimination; The right to worship according to one's individual beliefs, the right to think, and the right to innovate according to one's abilities based on the level of intelligence and age, and lose rights related to parents, namely the right to receive parental guidance; The right to know his parents, to be raised and cared for by his own parents; The right to get protection from discriminatory treatment; exploitation, both economic and sexual; neglect; cruelty, violence, and persecution; injustice; and other mistreatment; The right to be raised by their own parents. The basic rights of children are constitutional rights, namely rights that are recognized and protected by the 1945 Constitution. Likewise, regarding the origin of children with all their civil rights, both with mother and father, are also protected by the 1945 Constitution.

**Conflicts of Interest.** The authors declare no conflict of interest.

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[jes@meridian.utm.md](mailto:jes@meridian.utm.md)